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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,919	01/25/2002	Johan Knevels	926-62US (P09914US)	3749

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PHILADELPHIA, PA 19103-7013

EXAMINER

TUNG, TA HSUNG

ART UNIT	PAPER NUMBER
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1753

DATE MAILED: 11/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

050,919

Applicant(s)

KNEVELS

Examiner

T. TUNG

Group Art Unit

1753

Paper No. 7

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☒ Responsive to communication(s) filed on 10/06/03

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 1-3, 5, 6, 8-16 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-3, 5, 6, 8-16 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____

☐ Copies of the certified copies of the priority documents have been received

in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☒ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other _____

Office Action Summary

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Claims 1, 10, 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 3021949 in view of French 2122758, Fitterer 3,752,753 or VK and Kato et al 4,390,406.

As discussed in the previous Office action, it would have been obvious for DE to provide openings in cap 7 in view of French, Fitterer or VK, and to further make the cap out of plastic in view of Kato.

Applicant argues that Kato's electrode is intended for use at room temperatures, not the high temperature molten metal environment of DE. Since a plastic might melt at these high temperatures, one of ordinary skill in the art would not use a plastic as the material of the cap in DE.

This argument is not persuasive. The cap in the DE electrode probe is at the electrical connection end and is not intended to be immersed in the molten metal, and thus would not be subjected to the high temperatures of a molten metal. Note for example the Cure patent 4,342,633 (according to applicant corresponds with DE '949), which shows plastic elements 66, 68 at the electrical connection end of a probe.

Also, the melting point of any plastic is well-documented in reference handbooks. One merely would pick a plastic that has a high melting point, if temperature degradation is a concern.

Applicant also argues that it would be against the teaching of Kato to provide openings in the cap of Kato.

This argument is also not persuasive. Kato is being relied upon merely to show plastic upper-end caps are conventional. There is no reliance upon Kato's cap being porous, and there is

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no need that Kato's cap be porous for the rejection to be proper. It is well-settled that a secondary reference is not required to be identical to a primary reference in all aspects.

Claims 2, 3, 8, 9, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE '949 in view of French '758, Fitterer or VK and Kato et al and Krasberg '778, Aston et al '507 and/or Marovich et al 3,655,546.

No separate argument has been presented for the rejection of these claims.

Claims 5, 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE '949 in view of French '758, Fitterer or VK and Kato et al and and Shaw et al 3,755,125 or Horner et al 3,959,107 .

No separate argument has been presented for the rejection of these claims.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE '949 in view of French '758, Fitterer or VK and Kato et al and Moll et al 4,425,918 or Hans-Jurgen et al 4,400,258.

No separate argument has been presented for the rejection of this claim.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The examiner can be reached at 703-308-3329. His supervisor Nam Nguyen can be reached at 703-308-3322. Any general inquiry should be directed to the receptionist at 703-308-0661. A fax number for TC 1700 is 703-872-9306.



Ta Tung

Primary Examiner

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